

Message Text

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TO AMEMBASSY BONN IMMEDIATE

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C O N F I D E N T I A L O USBERLIN 1854

E.O.11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJECT: TAKEOVER IN BERLIN OF ANTI-TERRORISM LAW

REFS: A) BONN 14934; B) USBERLIN 1737

1. WE SHARE EMBASSY'S CONCLUSION THAT WHAT IS INVOLVED IN OUR CONSIDERATION OF THIS LAW IS MORE OPTICS THAN SUBSTANCE. AS REPORTED IN REF B, BUNDESTAG COMMITTEE STUDY EXPRESSED EXPECTATION THAT LAW WOULD NOT RESULT IN LARGER NUMBER OF CASES HANDLED BY FEDERAL PROSECUTOR. KEY TEST WILL REMAIN WHETHER OR NOT PARTICULAR CASE IS DEEMED ONE OF UNUSUAL IMPORTANCE REGARDLESS OF WHETHER OR NOT ARTICLE 3 COMES INTO FORCE.

2. WE AND BRITISH MISSION PROPOSED A QUITE STIFF PACKAGE OF A BK/O AND A BK/L WHICH WOULD KEEP US INFORMED OF ALL POTENTIAL FEDERAL PROSECUTOR CASES AND MAKE CLEAR THAT WE RESERVED RIGHT, REGARDLESS OF DIVISION OF COMPETENCES PROVIDED BY LEGISLATION AND FEDERAL PROSECUTOR'S WISHES TO DECIDE WHO HANDLED ANY CASE. WE EXPECTED THAT DECISIONS IN CONCRETE CASES WOULD CONTINUE TO BE MADE BY ALLIES IN CONSULTATION WITH GERMANS BOTH IN SEANT AND IN
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FTG. OUR PROPOSED APPROACH WOULD MAKE ALLIED RESERVATIONS

SOMEWHAT EASIER FOR GERMANS TO ACCEPT BECAUSE IT WOULD ALLOW THE APPEARANCE OF A FULL EXTENSION OF LAW. ON OTHER HAND IT IS HARD TO SEE HOW GERMANS MIGHT GET WRONG SIGNAL FROM THIS SINCE BK/O AND BK/L TAKEN TOGETHER WOULD MAKE QUITE CLEAR OUR CONTINUING PREOCCUPATION WITH DECIDING EACH CASE AS IT AROSE ON ITS MERITS, BOTH POLITICAL AND LEGAL.

3. APPROACH RECOMMENDED BY BRITISH MISSION AND US WOULD, TO BE SURE, BE LESS SATISFACTORY TO SOVIETS THAN THAT WHICH EMBASSIES ARE NOW CONSIDERING. WE ARE FRANKLY SKPETICAL, HOWEVER, THAT EMBASSY APPROACH WILL APPEASE SOVIETS. THEY ARE MORE LIKELY IN OUR VIEW TO SEE IT AS INDICATION THAT ALLIES ARE RUNNING SCARED ON FEDERAL PROSECUTOR-FEDERAL COURT ISSUE AND AS ENCOURAGEMENT TO USE MORE PRESSURE EITHER IN CONNECTION WITH LORENZ PROSECUTION OR WHEN NEXT CASE COMES DOWN PIKE. IT STRIKES US THAT WE ARE BETTER PLACED TO REBUT SOVIET PROTESTS IF WE DEFEND OUR DECISIONS ON BASIS THAT FEDERAL PROSECUTOR IS ACTING RELATIVELY ROUTINELY PURSUANT TO LAW IN FORCE IN BERLIN AND SUBJECT TO GENERLA ALLIED RESERVATIONS THAN IF WE DECIDE IN SPECIFIC CASE TO AGREE TO INDIVIDUAL PROSECUTIONS AFTER SAYING THAT FEDERAL PROSECUTOR'S GENREAL COMPETENCE CANNOT BE CONFIRMED BECAUSE IT INTRUDES INTO AREA OF OUR RESERVED RIGHTS.

4. WITH RESPECT TO CONCERN THAT BUBACK FOR HIS SUCCESSOR COULD FLY TO BERLIN IN SOME FUTURE LORENZ KIDNAPPING TYPE CASE AND PROLCAIM THAT HE WAS TAKING CASE OVER WITH FULL FORCE OF LAW BEHIND HIM, IT SHOULD NOT BE FORGOTTEN THAT BUBACK HAD LAW BEHIND HIM IN MARCH 1965. IT WAS WITHIN HIS COMPETENCE THEN AND IT IS IN HIS COMPETENCE NOW TO DESICE THAT CASE IS OF SUFFICIENT IMPORTANCE TO JUSTIFY HIS TAKING IT OVER. OUR PROBLEM IN MARCH 1975 AND PROBLEM WITH WHICH WE HAVE BEEN GRAPPLING SINCE THEN IS POLITICAL WISOM OF SUCH ACTION. REALISTICALLY SPEAKING OUR HANDLE IS FRG AWARENESS OF SENSITIVITY OF PREMATURE OVERT ACTION. REFUSAL TO PERMIT EXTENSION OF ARTICLE 3 WOULD BE BOW TO FRENCH CONCEPT

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THAT FRG NEEDS BRACING DASH OF ALLIED ACTION TO REMIND IT OF OUR CONTROL, WE FEEL THAT BEST CONRTROL IS ON E IN WHICH FRG IS LEFT IN NO DOUBT OF OUR BASIC SYMPATHY AND ACTS WITH US IN AWARENESS OF OUR COMMON NEED FOR CAREFUL CONSULTATION BEFORE ACTION IS TAKE*. FRENCH OVER-KILL IS AS LIKELY TO ENCORAGE FRG TO SEEK ADVENTUROUS NEW WAYS TO RECAPTURE WHAT IT WILL SEE AS LOST GROUND AS IT IS TO ENCOUAGE SUCH A

COOPERATEVE ATTITUDE.

5. IN SUMMARY, WE WOULD PREFER TO SHOW NOT QUITE SO MUCH FORTHCOMINGNESS TO SOVIETS LEST WE FEED THEIR APPETITE AND TO RELY VIS A VIS FRG MORE ON OUR SENSE OF SHARED COMMON INTERESTS THAN NAKED USE OF ALLIED POWER. IF EMBASSIES DETERMINE TO CONTRARY THAT ARTICLE 3 MUST BE FLATLY BARRED IN BERLIN, WE WOULD RECOMMEND THAT BLOW BE SOFTENED BY WEAKENING CONSIDERABLY REST OF DRAFT BK/O AND BK/L. WORST POSSIBLE SOLUTION WOULD BE TO ADD A BAN ON ARTICLE 3 TO BK/O-BK/L PACKAGE AS IT NOW STANDS AND TO PULL LAW OFF BERLIN HOUSE OF REPRESENTATIVES' AGENDA AT LAST MINUTE WHILE WE SQUABBLE WITH GERMANS. GEORGE

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